

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1049 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

CHAUDHARY CHELABHAI KHETABHAI BAZAR KANSA TALUKA PATAN

Appearance:

MR KT DAVE, APP for Appellant -State

MR KR RAVAL FOR MR DK MODI for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/03/98

ORAL CAV JUDGEMENT

This appeal is preferred by the appellant State of Gujarat against the judgment dated 4.8.1980 passed by the ld. Judicial Magistrate (First Class), Patan in Criminal Case No. 2617/85 whereby the ld. Trial Judge has acquitted the respondent accused of the offences punishable under Sec.7(1) and 16(1)(A)(I) of the

Prevention of Food Adulteration Act. (hereinafter referred to as the PFA Act.)

2. According to the prosecution, Food Inspector of the State of Gujarat for the relevant area, taken sample of Edible Groundnut Oil from the shop of the respondent accused on 12.3.1985. The respondent accused is a small trader running grossery shop situated at village Kansa, Ta: Patan. Admittedly, the sample was taken from a sealed container having a lable of " Madhur Brand Pure Groundnut Oil". The contents of the lable found on the tin reads " Taste like its name, Madhur Brand Pure Duble-filtered Groundnut Oil, 15 Kg. Net, Mfg.: Shri Vijay Oil Mill Company, Ambawadi Road, Dhoraji." The tin was pasted and said tin was packed and sealed and the same was broken open at the time of collecting sample which was sent to the Public Analyst. According to the prosecution, the sample was collected in accordance with the Rules framed under the PFA Act and was sent to the Public Analyst and on analysis, the same was found adulterated.

3. The ld. Trial Judge, after appreciating the evidence led before him by the respective parties, came to the conclusion that the respondent accused is entitled to the benefit of Sec. 19(2) of the PFA Act and that sample is not taken in accordance with the provisions of the Act and consequently, by his judgment dated 4.8.1980, acquitted the accused of the offences with which he was charged.

4. I have gone through entire record and proceedings of the case. I have heard ld. APP Mr.Dave for the appellant State and ld. Counsel Mr. KR Raval for the respondent-accused. From the record, the following facts emerges as undisputed and ld. AGP also could not deny the correctness of factual aspect stated herein below; viz. that the sample was taken from the packed and sealed tin of groundnut oil from the shop of the respondent accused; that on the said tin, lable of Brand Name as well as address of the manufacturer was written which also was seized by the Food Inspector; in the cross-examination of the Food Inspector, he had admitted that the respondent accused is selling groundnut oil by purchasing the same from outside meaning thereby that he is not manufacturing the groundnut oil. It is also an admitted fact that at the time when Food Inspector collected sample, he came to know about the name and address of the manufacturer of the groundnut oil.

5. It is settled legal position that when sample is collected from packed and sealed tin and if sample fails,

it is the responsibility of the manufacturer and not the person who has purchased the same for selling on retail basis. It is not necessary to quote Sec.9(2) of the PFA Act. It is surprising that despite the provisions of Sec.19(2) of the PFA Act, the Food Inspector had not tried to launch prosecution against both i.e. manufacturer and retailer. The star argument appearing for the respondent accused is based on the above legal position and he has placed reliance on a decision reported in the case of The State of Gujarat v/s Ratilal Maganlal shah & Others, reported in 1996 Cri.LJ page 2683 wherein it has been categorically held that when the accused is a retailer and has produced bill containing warranty for purchase of the article in question from the manufacturer, the accused cannot be held guilty for selling the adulterated article. The facts of the case cited apply to the case on hand. Ld. Trial Judge has appreciated this legal aspect in its true and correct perspective.

6. In view of the above facts which must have been available to the sanctioning authority, it seems that the sanctioning authority has also not applied its mind before granting sanction to prosecute the respondent accused. When the sample was collected from the sealed tin having every details as to manufacturer of the article, as referred earlier, the sanctioning authority ought to have made inquiry about the same and ought not to have granted sanction mechanically without applying its mind. Under the circumstances, the findings as to the legality and validity of the sanction to prosecute the respondent accused, as evaluated by the ld. Trial Judge, is in conformity with the facts available on record and also in accordance with the legal position. So on both these counts, findings of the ld. Trial Judge to acquit the respondent accused cannot be said to be, in any manner, erroneous warranting any interference by this court and, therefore, appeal filed by the State requires to be dismissed.

7. For the reasons stated above, there is no substance in this appeal and the same is hereby dismissed.

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